

NO. 03-20-00129-CV

**In the Third Court of Appeals,
Austin Texas**

FILED IN
3rd COURT OF APPEALS
AUSTIN, TEXAS
3/18/2020 9:31:45 AM
JEFFREY D. KYLE
Clerk

QATAR FOUNDATION FOR EDUCATION, SCIENCE AND COMMUNITY DEVELOPMENT,
Appellant,

V.

KEN PAXTON, ATTORNEY GENERAL, AND ZACHOR LEGAL INSTITUTE,
Appellees.

On appeal from the 200th Judicial District Court, Travis County,
Texas, Trial Court No. D-1-GN-18-006240
The Honorable Karin Crump, Judge Presiding

**RESPONSE TO QATAR'S EMERGENCY MOTION FOR REVIEW OF TRIAL
COURT'S ORDER DENYING APPELLANT'S MOTION TO SUPERSEDED
JUDGMENT PENDING APPEAL**

RIGGS & RAY, P.C.
Jennifer S. Riggs
Bar No. 16922300
506 West 14th Street, Suite A
Austin, Texas 78701
(512) 457-9806 Telephone
(512) 457-9066 Facsimile
Jriggs@r-alaw.com

COUNSEL FOR APPELLEE ZACHOR
LEGAL INSTITUTE

TABLE OF CONTENTS

I.	Summary of Response	1
II.	Nature and Background of the Case	1
III.	Standard of Review.....	4
IV.	TRAP 25	4
V.	TRAP 24.....	5
VI.	No Record Presented to Support Relief Requested.....	9
	A. No Evidence that Disclosure Forthcoming.....	9
	B. Improper to Prevent Disclosure Required by Federal Law.....	10
	C. Insufficient Evidence of Harm	11
	PRAYER	13
	CERTIFICATE OF SERVICE.....	14
	APPENDIX	

INDEX OF AUTHORITIES

CASES

<i>Boeing Company v. Paxton</i> , 466 S.W.3d 831 (Tex. 2015).....	3
<i>Bradshaw v. Sikes</i> , (not reported in S.W.3d) 2013 W.L. 978782 (Tex. App. – Fort Worth 2013, pet. denied).....	8, 9
<i>El Caballero Ranch, Inc., v. Grace River Ranch, LLC</i> , ---S.W.3d ---, 2016 W.L. 4444400 (Tex. App. – San Antonio 2016, no pet.).	7, 8
<i>In re Dallas Area Rapid Transit</i> , 967 S.W.2d 358 (Tex. 1998).....	6, 7
<i>In re State Board for Educator Certification</i> , 452 S.W.3d 802 (Tex. 2014).....	7
<i>Kaldis v. Aurora Loan Services</i> , 424 S.W.3d 729 (Tex. App. – Houston [14 th Dist.] 2014, no pet.).	9

STATUTES

20 U.S.C.A. §1011f(e)	10
-----------------------------	----

TEX. GOV'T CODE - Texas Public Information Act (TPIA)

§552.001 et seq.....	2
§552.104	12
§552.110.....	12
§552.1235.....	2
§552.324.....	2

RULES

TRAP 24.1.....	4, 5
TRAP 24.2.....	4, 5, 6
TRAP 24.4(a)(4).....	1
TRAP 25.1(h).....	4, 5
TRAP 29.2	

MISCELLANEOUS

84 ed. Reg. 31054 (June 28, 2019)	11
Tex. Att’y Gen. OR2018-20240 (August 14, 2018).....	2

To the Honorable Justices of the Third Court of Appeals:

I. Summary of Response

Texas Rules of Appellate Procedure (TRAP) Rule 24.4(a)(4) provides the basis for this Court's review of the trial court's determination of whether to permit suspension of *enforcement* of a judgment pending appeal. In this case, however, there was no judgment that any party is threatening to, or indeed could, enforce. The trial court dismissed this case for want of subject matter jurisdiction. For that reason, there is no enforcement of a judgment to be suspended. What the Qatar Foundation is attempting to do is to set up a straw judgment that it can suspend enforcement of and, thereby, obtain what amounts to an injunction against a nonparty – Texas A & M University. That would be an improper use of Rule 24.4(a)(4).

II. Nature and Background of the Case

The underlying case concerned foreign influence on Texas A&M University ("TAMU"), a public university, through attempted "secret" funding. The Qatari government has been identified as a vocal purveyor of anti-Semitism, as well as a promoter of radical extremist Islamic terrorist groups. Zachor Legal Institute is an advocacy group based in the United States dedicated to combatting the spread of anti-Semitism.

Pursuant to the Texas Public Information Act (TPIA), TEX. GOV'T CODE §552.001 et seq., Zachor, through its attorney Marc Greendorfer, requested information about funding and donations received by TAMU "from the government of Qatar and/or agencies and subdivisions of the government of Qatar." The Qatar *Foundation* responded, seeking to conceal this information from the public, claiming that it had a proprietary interest in the TAMU campus it set up in Qatar and in its funding of TAMU in this country.

On June 7, 2018, TAMU sought an open records decision from the Texas Attorney General regarding whether the requested information is excepted from public disclosure under § 552.1235 of the TPIA, which protects the identity of *private* donors. In response, the Attorney General issued Tex. Att'y Gen. OR2018-20240 (August 14, 2018). The Attorney General ruled, "[T]he university must withhold the donor's identifying information, which you marked under section 552.1235 of the Government Code. The university must release the remaining information." *Id.*

On October 12, 2018, the Qatar Foundation filed the underlying lawsuit against the Attorney General, without naming TAMU, contesting OR2018-20240. TAMU itself did not file this lawsuit to appeal the decision of the Attorney General, as it is entitled to do under section 552.324 of the TPIA.

The Qatar Foundation did not make any effort to bring TAMU into the lawsuit.

No provision of the TPIA authorizes a third party who objects to the release of information to appeal a decision of the Attorney General. When the governmental body is a party under section 552.324, i.e. with standing, the courts will have jurisdiction over other parties, as in the case addressed in *Boeing Company v. Paxton*, 466 S.W.3d 831 (Tex. 2015). Absent the presence of the subject governmental body, however, there is simply no waiver of sovereign immunity for such a lawsuit against the Attorney General. Although a party arguably might allege *ultra vires* acts by the Attorney General to establish jurisdiction, no such acts were alleged here.

For these reasons, Zachor included a plea to the jurisdiction, as an alternative argument, with its motion for summary judgment, contending both that TAMU is a necessary party and that the TPIA does not contain a waiver of immunity that authorizes third parties to sue the Attorney General to challenge a TPIA decision. The Qatar Foundation and the Attorney General were afforded ample time to address the plea to the jurisdiction, apart from the parties' respective cross motions for summary judgment. (*See* Qatar Emergency Motion, Exhibits 4 and 5, respectively). Zachor replied. (Appendix, Tab 1 [omitted from Qatar's Emergency Motion Exhibits]) The

trial court granted the plea to the jurisdiction, dismissing the case for lack of jurisdiction. (Appendix, Tab 2; Qatar Emergency Motion, Exhibit 6)

Qatar then sought to suspend enforcement of that order under TRAP 24.1 and 24.2. (Qatar Emergency Motion, Exhibit 7) Zachor opposed. (Qatar Emergency Motion, Exhibit 8) The Attorney General did not oppose. The trial court held a hearing at which the parties presented argument but at which no evidence was presented by any party. The trial court denied the motion. (Appendix, Tab 3; Qatar Emergency Motion, Exhibit 1)

III. Standard of Review

Zachor agrees that this Court has the authority under TRAP 24.4(a)(4) to review the trial court's "determination of whether to permit suspension of enforcement." Zachor does not agree that TRAP 29.2 or cases decided under TRAP 29, however, apply. TRAP 29 applies in the context of interlocutory appeals. The dismissal in this case was final, not interlocutory. The standard of review, however, is for an abuse of discretion by the trial court.

IV. TRAP 25

Under TRAP Rule 25.1(h),

The filing of a notice of appeal does not suspend enforcement of the *judgment*. Enforcement of the *judgment* may proceed unless:

- (1) The *judgment* is suspended in accordance with Rule 24; or

- (2) The appellant is entitled to supersede the *judgment* without security by filing a notice of appeal.

TEX. R. APP. P. 25.1(h)(emphasis added).

V. TRAP 24

Under TRAP Rule 24.1, a “judgment debtor” is entitled to supersede a “judgment” while pursuing an appeal. *See* TEX. R. APP. P. 24.1. TRAP Rule 24.1 outlines the requirements for suspending enforcement of a judgment pending an appeal in civil cases, which include by agreement, with a bond, with a cash deposit in lieu of bond, or with alternative security set by the trial court. TRAP Rule 24.2(1) and (2) outline how the amount of the bond, deposit, or security is to be determined. TEX. R. APP. P. 24.2. Rule 24.2(3) governs how the amount of the bond, deposit, or security is to be determined for judgments *other* than those for money or an interest in property. TEX. R. APP. P. 24.2 (3).

But TRAP Rule 24.2(3) nonetheless applies to *judgments*:

(3) Other *Judgment*. When the *judgment* is for something other than money or an interest in property, the trial court must set the amount and type of security that the *judgment debtor* must post. The security must adequately protect the *judgment creditor* against loss or damage that the appeal might cause. But the trial court may decline to permit the *judgment* to be superseded if *the judgment creditor* posts security ordered by the trial court in an amount and type that will secure the *judgment debtor* against any loss or damage caused by the relief granted the *judgment creditor* if an appellate court determines, on final disposition, that that relief was improper. When the *judgment*

debtor is the state, a department of this state, or the head of a department of this state, the trial court must permit a *judgment* to be superseded except in a matter arising from a contested case in an administrative enforcement action.

TEX. R. APP. P. 24.2 (3).

Zachor agrees that a dismissal of all claims and all parties is final and potentially appealable. The issue here, however, is whether there is anything *enforceable* about such an order that, as a practical matter, can be suspended. If the trial court had reached the merits and held that the decision of the Attorney General is correct, or, in the alternative, incorrect, there would still be an issue for both parties of how that is enforced. Decisions of the Attorney General are advisory in nature. They are not judgments that can be enforced against the Attorney General to either prevent or compel disclosure. The governmental body that holds the information is the only party against whom such relief would be effective. That is why Zachor argued that TAMU is a necessary party.

In support of its motion, the Qatar Foundation attempts to rely on the decision in *In re Dallas Area Rapid Transit*, 967 S.W.2d 358 (Tex. 1998). In that case, the trial court entered judgment against the Dallas Area Rapid Transit Authority (DART) ordering it to disclose information requested by the *Dallas Morning News* under the Texas Public Information Act. DART

appealed and argued that the trial court had abused its discretion in denying *supersedeas* of the judgment pending DART's appeal. The Texas Supreme Court agreed.

The *DART* case, however, does not apply here for several reasons. First, a judgment on the merits ordering the release of information was at issue in that case – not a dismissal for lack of jurisdiction as in this case. Second, the governmental body that actually held the information, DART, was the party appealing the adverse judgment. Here, the governmental body that holds the information, TAMU, did *not* file a lawsuit to challenge the decision of the Attorney General and was not otherwise named as a party in this case. Third, the *DART* case was decided before the decision in *In re State Board for Educator Certification*, 452 S.W.3d 802 (Tex. 2014), in which the Texas Supreme Court held that a governmental body does *not* have an absolute right to supersede an adverse judgment.

Moreover, all that the Qatar Foundation would be entitled to is to return the case to the position it was in before the order of dismissal – which was *not* with the benefit of any order preventing disclosure of the requested information. *Supersedeas* is a writ that preserves the *status quo* of a matter as it existed before the issuance of a final judgment from which an appeal is being taken. *El Caballero Ranch, Inc., v. Grace River Ranch, LLC*, ---S.W.3d

---, 2016 W.L. 4444400,*3 (Tex. App. – San Antonio 2016, no pet.). Here, the Qatar Foundation does not have an order prohibiting disclosure to fall back on – the Attorney General opinion the Qatar Foundation attempted to “appeal” required disclosure of certain information, with only identifying information redacted.

As the Fort Worth court of appeals stated when faced with a similar “nothing to supersede” situation:

There was nothing, other than the judgment for costs, for Bradshaw to supersede, as the trial court’s take-nothing judgment against her left her and the opposing parties in the same position they had been in prior to her lawsuit. *See* Tex. R. App. P. 24.2(a) (describing the types of judgment that can be superseded-other than conservatorship or cases involving a governmental entity-as judgments for recovery of money, real property, and “other”; all three of these require that there be a judgment debtor); *In re marriage of Richards*, 991 S.W.2d 30, 31–32 (Tex. App.-Amarillo 1998, no pet.) (noting, in divorce appeal, that when a judgment does not provide for the recovery of money or property in the possession of the other party, there is nothing for the appellee to execute nor any need of the appellant to supersede an attempt by the appellee to execute on the decree); *see also* Robert B. Gilbreath and Curtis L. Cukjati, *Superseding the “Other Judgment,”* 12 App. Advoc. 11, 11–13 (1998) (discussing how to handle *supersedeas* situations in which judgments for something other than money or property occur; a take-nothing judgment is not listed in the summary of case law describing “other judgments” that can be superseded). Here, because costs were the only item awarded in the otherwise take-nothing judgment, there was no other enforcement item to suspend. In other words, “Nothing comes from nothing. Nothing ever could.” Richard Rogers and Oscar Hammerstein II, *Something Good*, on *The Sound of Music* (1959).

Bradshaw v. Sikes, (not reported in S.W.3d) 2013 W.L. 978782, n. 12 (Tex. App. – Fort Worth 2013, pet. denied); accord *Kaldis v. Aurora Loan Services*, 424 S.W.3d 729, 737-38 (Tex. App. – Houston [14th Dist.] 2014, no pet.).

For these reasons, the Qatar Foundation is not entitled to supersede the order of dismissal. At most, the Qatar Foundation would be entitled to being returned to the place it was in before the order of dismissal – it would be deemed simply to have a case pending in district court against the Attorney General. That is not an order to withhold documents or to produce documents, neither of which could be issued against a non-party. Otherwise, any party could obtain what amounts to an injunction against non-parties, no matter how questionable the basis for jurisdiction, simply by filing a lawsuit and appealing an order dismissing the case for lack of jurisdiction.

VI. No Record Presented to Support Relief Requested

A. No evidence that disclosure forthcoming

Despite the “sky is falling” arguments in the Qatar Foundation’s motions below and in this Court, the Qatar Foundation fails to show the nexus between the harm it fears and the simple fact of the dismissal of its claims. No evidence was presented by Qatar that TAMU is threatening to release the information at issue. Zachor certainly hopes it will, particularly

since federal law requires that it submit such information to the federal government. But it was incumbent on Qatar to create a record in the trial court and to bring that record to this Court that would show harm, both that disclosure was threatened and that harm would result. The Qatar Foundation cannot show how it will be irreparably injured simply by the dismissal of its claims in this case.

B. Improper to Prevent Disclosure Required by Federal Law

It would have been an abuse of discretion for the trial court to order TAMU not to release the requested information. As indicated, TAMU was not a party. As a result, it would have been an abuse of discretion to give the Qatar Foundation the vague relief it requested -- an order “prohibiting release” of the requested information – which was clearly designed to apply to a non-party.

In addition, TAMU has an affirmative duty to submit to the United States Secretary of Education a public disclosure report that includes the QF’s identity and other information. Federal law not only mandates disclosure of a foreign source’s identity but also that such information be open to the public. 20 U.S.C.A. § 1011f(e)(“All disclosure reports required by this section shall be public records open to inspection and copying during business hours”). Federal law clearly recognizes that the public has a

substantial interest in inspecting information about foreign gifts and contracts between higher education institutions and foreign sources.

Less than a year ago, the United States Department of Education published a copy of its letter to TAMU investigating whether the University's reporting

may not fully capture all *covered gifts, contracts, and/or restricted or conditional gifts or contracts from or with all foreign sources (e.g., the government of Qatar, its agencies, and agents including but not limited to the Qatar Foundation for Education, Science and Community Development . . .)* For example, Texas A & M University's Section 117 reporting should have included Texas A & M University at Qatar, see, e.g., <https://www.qatar.tamu.edu/about/> ("As a branch campus, Texas A & M University at Qatar is included in the institution's accreditation").

84 Fed. Reg. 31054, at 31054 (June 28, 2019) (Appendix, Tab 4; copy attached as Exhibit 13 to Zachor Motion for Summary Judgment).

C. Insufficient Evidence of Harm

The Qatar Foundation does not bring to this Court any record it made in the trial court upon which to allege an abuse of discretion in the trial court's refusal to suspend enforcement of the order of dismissal. In specific, the Qatar Foundation does not present a record that it has a proprietary interest in the information at issue. The fact that both TAMU and the Qatar Foundation have publicly announced the Qatar Foundation's support of

TAMU and of its degree-conferring TAMU campus established in 2003 in Qatar negates any element of secrecy.

In the trial court, the Qatar Foundation asserted that “the disclosure of the information at issue would be harmful to Texas A &M University.” The Qatar Foundation lacks standing to assert TAMU’s interests. Moreover, TAMU expressly declined to take a position on Qatar’s assertion about the applicability of the proprietary exceptions. (Appendix, Tab 5; Zachor Motion for Summary Judgment, Exhibit 6) As a result, the Qatar Foundation cannot demonstrate any competitive harm to TAMU, including to the TAMU campus in Qatar, TAMUQ.

Nor has the Qatar Foundation shown that it is subject to any competitive harm. The Qatar Foundation has failed to reconcile the fact that it already has a TAMU campus in Qatar and has since 2003. There is no evidence that TAMU has indicated any intent to terminate its relationship with Qatar – evidence that is essential to demonstrate the applicability of TPIA exceptions 552.104 and 552.110. There is no evidence that TAMU will have only one foreign campus. And there is no evidence that TAMU would refuse to accept the Qatar Foundation’s millions of dollars in donations if the amount and conditions on those dollars are disclosed to the public.

In conclusion, the Qatar Foundation did not present sufficient evidence to support its request for emergency suspension of enforcement of the order dismissing its claims for lack of jurisdiction.

PRAYER

For the reasons stated above, Zachor respectfully prays that the Court deny the Qatar Foundation's Emergency Motion for Review of Trial Court's Order Denying Appellant's Motion to Supersede [Enforcement of] Judgment Pending Appeal.

Respectfully submitted,

/s/Jennifer S. Riggs_____

Jennifer S. Riggs

Texas Bar No. 16922300

RIGGS & RAY, P.C.

506 West 14th Street, Suite A

Austin, Texas 78701

(512) 457-9806

(512) 457-9066 facsimile

jriggs@r-alaw.com

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document has been forwarded by e-service on this 16th day of March, 2020, to:

D. Patrick Long
Texas Bar No. 12515500
pat.long@squirepb.com
Alexander J. Toney
Texas Bar No. 24088542
alex.toney@squirepb.com
SQUIRE PATTON BOGGS, LLP
2000 McKinney Ave., Suite 1700
Dallas, Texas 75201
(214) 758-1500
(214) 758-1550 (facsimile)

Kimberly Fuchs
Texas Bar No. 24044140
Assistant Attorney General
Kimberly.fuchs@oag.texas.gov
Open Records Litigation
P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548
(512) 475-4195
(512) 320-0167

/s/Jennifer S. Riggs
Jennifer S. Riggs

APPENDIX

TAB 1

CAUSE NO. D-1-GN-18-006240

QATAR FOUNDATION FOR	§	IN THE DISTRICT COURT
EDUCATION, SCIENCE AND	§	
COMMUNITY DEVELOPMENT,	§	
<i>Plaintiff,</i>	§	
	§	
v.	§	200TH JUDICIAL DISTRICT
	§	
KEN PAXTON,	§	
TEXAS ATTORNEY GENERAL,	§	
<i>Defendant.</i>	§	OF TRAVIS COUNTY, TEXAS

**ZACHOR LEGAL INSTITUTE'S
REPLY REGARDING JURISDICTION**

I. SUMMARY OF REPLY

Texas law is well established that no statute should be interpreted to waive sovereign immunity absent clear and unambiguous language to that effect. In an unusual reversal of his usual position in lawsuits against governmental entities, the Attorney General argues in favor of this Court finding jurisdiction. In specific, he argues that the phrase "or other person or entity that files a suit" in section 552.325(a) and (b) of the Texas Public Information Act (TPIA) is a waiver of sovereign immunity that allows a private party to sue the Attorney General to challenge a decision that requires the disclosure of public information. The Qatar Foundation also asserts that argument. The practical effect of this position is to shift the dispute to private parties and to expand the body of litigants who may oppose public disclosure under the TPIA. That is not what the TPIA was designed to do.

II. WAIVERS OF SOVEREIGN IMMUNITY MUST BE CLEAR AND UNAMBIGUOUS

Sovereign immunity is a common-law doctrine that is ultimately within the Texas Supreme Court's province to modify or even abrogate. *See Texas Dep't of Crim. Justice v. Miller*, 51 S.W.3d 583, 592-93 (Tex.2001) (Hecht, J., concurring). The Texas Supreme Court, however, ordinarily defers to the Texas Legislature to decide to waive immunity. *State v. Oakley*, 227 S.W.3d 58, 62 (Tex.2007). The rationale for deferring is that the legislature is better suited to weigh the public-policy considerations that bear upon whether to waive sovereign immunity. *See City of Round Rock v. Whiteaker*, 241 S.W.3d 609, 626-627 (Tex. App. – Austin 2007, pet. denied); *see also City of Galveston v. State*, 217 S.W.3d 466, 469 (Tex. 2007) (waiver of immunity “depends entirely upon statute”) There exists a “heavy presumption in favor of immunity.” *City of Galveston*, 217 S.W.3d at 469. “[S]pecial rules of construction apply” to statutes that are asserted to be waivers of immunity-“no statute should be construed to waive immunity absent ‘clear and unambiguous language.’” *State v. Oakley*, 227 S.W.3d at 62 (quoting Tex. Gov't Code Ann. § 311.034 (West 2005 & Supp.2009)).

III. TPIA SECTION 552.325 DOES NOT WAIVE IMMUNITY TO ALLOW ANY THIRD PARTY OPPOSING DISCLOSURE TO SUE THE ATTORNEY GENERAL

A. THE LANGUAGE OF SECTION 552.325

The Attorney General and the Qatar Foundation rely on the emphasized language in section 552.325, which provides in full as follows:

(a) A governmental body, officer for public information, or *other person or entity that files a suit seeking to withhold information from a requestor* may not file suit against the person requesting the information. The requestor is entitled to intervene in the suit.

(b) The governmental body, officer for public information, or *other person or entity that files the suit* shall demonstrate to the court that the governmental body, officer for public information, or other person or entity made a timely good faith effort to inform the requestor, by certified mail or by another written method of notice that requires the return of a receipt, of:

(1) the existence of the suit, including the subject matter and cause number of the suit and the court in which the suit is filed;

(2) the requestor's right to intervene in the suit or to choose to not participate in the suit;

(3) the fact that the suit is against the attorney general in Travis County district court; and

(4) the address and phone number of the office of the attorney general.

(c) If the attorney general enters into a proposed settlement that all or part of the information that is the subject of the suit should be withheld, the attorney general shall notify the requestor of that decision and, if the requestor has not intervened in the suit, of the requestor's right to intervene to contest the withholding. The attorney general shall notify the requestor:

(1) in the manner required by the Texas Rules of Civil Procedure, if the requestor has intervened in the suit; or

(2) by certified mail or by another written method of notice that requires the return of a receipt, if the requestor has not intervened in the suit.

(d) The court shall allow the requestor a reasonable period to intervene after the attorney general attempts to give notice under Subsection (c)(2).

Tex. Gov't Code §552.325 (emphasis added).

At issue then is whether the rather vague reference to "other person or entity that files a suit" to oppose disclosure clearly and unambiguously waives the

sovereign immunity of the Attorney General. Section 552.325 clearly waives immunity for and allows a *requestor* to sue: “The requestor is entitled to intervene in the suit.” Tex. Gov’t Code §552.325 (a). In fact, section 552.325 is all about the requestor – the notice that must be given, the time to allow to intervene, etc. No similar language applies to third parties opposing disclosure.

The Attorney General also argues that the title of section 552.325 must be considered because it uses the term “parties” as opposed to the term “governmental bodies.” (Attorney General Response to Plea, p. 2) Apart from the fact that the title of a section is not to be considered in interpreting the meaning of a statute, the focus of sections 552.324 and 552.325 is plainly to prohibit governmental bodies from making a requestor an involuntary party to a lawsuit over a decision of the Attorney General. *See Lake Travis Indep. Sch. Dist. v. Lovelace*, 243 S.W.3d 244, 251-252 (Tex. App. – Austin 2007, no pet.). The use of “parties,” in plural, refers to both requestors and to governmental bodies – i.e. who are proper parties.

B. SECTION 552.325 IN CONTEXT WITH SECTION 552.324

As with section 552.325, when the Texas Legislature intended to waive immunity in the TPIA, it did so clearly. For example, section 552.324 is a clear waiver of immunity that expressly authorizes a governmental body to file a lawsuit against the Attorney General but also provides explicit limits on the lawsuit:

(a) The only suit a governmental body may file seeking to withhold information from a requestor is a suit that:

(1) is filed in a Travis County district court against the attorney general in accordance with Section 552.325; and

(2) seeks declaratory relief from compliance with a decision by the attorney general issued under Subchapter G.

(b) The governmental body must bring the suit not later than the 30th calendar day after the date the governmental body receives the decision of the attorney general determining that the requested information must be disclosed to the requestor. *If the governmental body does not bring suit within that period, the governmental body shall comply with the decision of the attorney general.* If a governmental body wishes to preserve an affirmative defense for its officer for public information as provided in Section 552.353(b)(3), suit must be filed within the deadline provided in Section 552.353(b)(3).

Tex. Gov't Code §552.324 (emphasis added). Here, the governmental body, Texas A & M University (TAMU), did *not* file a lawsuit and must now release the information the Attorney General ordered disclosed in the first TPIA decision, the only decision at issue in this lawsuit.

Sections 552.324 and 552.325 make it clear that the Texas Legislature knew how to waive immunity when it chose to do so. It could have provided such authority for third parties whose privacy or property interests were implicated, but it did not. Instead, it afforded such third parties the opportunity to submit comments to the Attorney General opposing release of requested information. *See* Tex. Gov't Code §§552.304, 552.305. That is not the same thing as authorizing a lawsuit.

C. THE *BOEING* CASE DID NOT ADDRESS WHETHER SECTION 552.325 IS A WAIVER OF IMMUNITY

As the Attorney General acknowledged, the issue of third party standing under section 552.325 was not squarely at issue in the Texas Supreme Court's decision in *Boeing Company v. Paxton*, 466 S.W.3d 831 (Tex. 2015). (Attorney General Response to Plea, p. 3). Zachor maintains that the issue has not been foreclosed by *Boeing*.

In *Boeing*, the language regarding section 552.325 appears in a string of references to the statement that

[t]he government, however, gathers a great deal of information from people and companies doing business in Texas, and some requests may also implicate the privacy or property interests of third parties. When a citizen's request involves this type of information, the PIA permits the third party to raise the issue and any applicable exception to the information's disclosure with the Attorney General, or in district court, or both. *See id.* § 522.305(b) (permitting person whose privacy or property interests are implicated to appear in the Attorney General's administrative determination of the request); *id.* § 552.325 (recognizing third party's right to file suit seeking to withhold information from a requestor). The Boeing Company is such a third party here.

Boeing, 466 S.W.3d at 833. At first blush it appears this language resolves the matter. Upon closer examination, however, it is clear the language is *dicta*.

The Texas Supreme Court did not address whether section 552.325 clearly and unambiguously waives sovereign immunity because no party in that case, including the Attorney General, challenged jurisdiction. The fact that the courts *may* raise jurisdiction *sua sponte* does not mean that they must do so or that the failure to do so constitutes a ruling on jurisdiction.

Further, the central issue in the *Boeing* case was whether Boeing had standing to assert the applicability of section 552.104, the competitive bidding exception, not whether Boeing had standing to sue in the first place. For many years, the Attorney General had ruled that only governmental bodies could raise the exception. *See Boeing*, 466 S.W.3d at 835-836. Boeing attempted to raise the exception in the process of submitting comments under section 552.305 of the TPIA, but the Attorney General refused to apply the exception. The Texas Supreme Court rejected that position.

In *Boeing*, there was no reason to challenge jurisdiction because Boeing had joined both the governmental body, i.e. the Port Authority, and the Attorney General in the lawsuit. *See Boeing*, 466 S.W.3d at 835. The Court stated that the Port Authority could defer to Boeing to make the arguments for it. *See Boeing*, 466 S.W.3d at 838. In the *Boeing* case, the Port Authority clearly was aligned with Boeing. *See Boeing*, 466 S.W.3d at 837.

It is well established that once it is shown that one party has standing, the courts have jurisdiction. As a general rule, courts analyze the standing of each individual plaintiff to bring each individual claim he or she alleges. *Patel v. Texas Dep't of Licensing & Regulation*, 469 S.W.3d 69, 77 (Tex. 2015). When there are multiple plaintiffs in a case who seek injunctive or declaratory relief, however, the court need not analyze the standing of more than one plaintiff—so long as one plaintiff has standing to pursue as much or more relief than any of the other plaintiffs. *Id.* “The reasoning is fairly simple: if one plaintiff prevails on the merits,

the same prospective relief will issue regardless of the standing of the other plaintiffs.” *Id.* (citations omitted). In *Boeing*, the Port Authority had standing under sections 552.324 and 552.325 to challenge the Attorney General’s decision.

IV. TAMU IS A NECESSARY PARTY

The Qatar Foundation confuses the Texas Rules of Civil Procedure regarding joinder with what constitutes a necessary party and the implications of a failure to name a necessary party. There are two primary reasons that the failure to bring TAMU into this lawsuit is significant. One is that TAMU’s presence is necessary to establish jurisdiction, through TAMU’s standing to sue the Attorney General under the limited waiver of immunity in sections 552.324 and 552.325 of the TPIA. The second is the language in section 552.324 about the consequences of the failure of TAMU to have filed a lawsuit to challenge the Attorney General’s decision.

Section 552.324 of the TPIA provides consequences for the failure of TAMU to file a lawsuit:

(b) The governmental body must bring the suit not later than the 30th calendar day after the date the governmental body receives the decision of the attorney general determining that the requested information must be disclosed to the requestor. *If the governmental body does not bring suit within that period, the governmental body shall comply with the decision of the attorney general.* If a governmental body wishes to preserve an affirmative defense for its officer for public information as provided in Section 552.353(b)(3), suit must be filed within the deadline provided in Section 552.353(b)(3).

Tex. Gov’t Code §552.324 (emphasis added).

It is undisputed that TAMU did not file a lawsuit. It is undisputed that the Qatar Foundation did not bring TAMU in as a party, whether as defendant or as

involuntary plaintiff. It is also undisputed that the 30 day deadline for TAMU to have filed a lawsuit to challenge the decision of the Attorney General under section 552.324 has passed. As a result, TAMU has a duty to release the information ruled public in Tex. Att’y Gen. OR2018-20240. *See Thomas v. Cornyn*, 71 S.W.3d 473, 482 (Tex. App. – Austin 2002, no pet.)(absent lawsuit by governmental body, information must be released).

Moreover, TAMU is the governmental body whose information is at issue. The Attorney General is not the custodian of the records – he is even prohibited from releasing the information. Tex. Gov’t Code §552.3035. More important, a ruling against the Attorney General in this case will not prohibit TAMU from releasing the information at issue. Only a ruling against TAMU can do that. As a result, in very plain terms, the Qatar Foundation is simply seeking an advisory opinion – the kind of opinions the courts lack jurisdiction to issue.

V. POLICY ISSUES

What does this mean for persons who submit information to a governmental body and wish to prevent disclosure of their information? Are they left without a remedy? No. They have procedural protection in the form of the right to submit comments in the TPIA process under sections 552.304 and 552.305. The Texas Legislature has not elected to give them the right to “appeal” the resulting decision. Like all the other litigants who challenge agency actions and decisions, absent a waiver of immunity conferring the right to sue, they must show a violation of a constitutional right or that an agency official, in this case the Attorney General,

acted *ultra vires*. A disagreement over the interpretation of the TPIA does not meet that standard.

So why didn't the Attorney General file a plea to the jurisdiction or support the plea filed by Zachor? Although it does not change the legal question regarding the scope of the waiver in section 552.325 of the TPIA, it is an interesting question. As a practical matter, favoring jurisdiction allows the Attorney General to retain control and to retain venue in Travis County. If a governmental body sues, venue is mandatory in Travis County. Tex. Gov't Code §552.324(a)(1). If a private party were to allege constitutional rights in preventing disclosure, it would most likely have to seek relief, injunctive and/or declaratory, against the governmental body threatening to release the information. That might not be in Travis County. And unless the governmental body at issue were a state agency, the Attorney General might not even be entitled to notice of the lawsuit. He certainly would not be a necessary party.

The position of not opposing jurisdiction might make the Attorney General's job easier and litigation more convenient, but the practical effect of this position is to shift the dispute to private parties and to expand the body of litigants who may oppose public disclosure under the TPIA. The position also would allow governmental bodies to avoid the effect of section 552.325(b), which requires disclosure when the governmental body does not file the lawsuit. The end result is more delay, more litigation, and less information available to the public. And those third party litigants are not held to the same standard that this Court sees every

day in litigation with the State of Texas. That is not what the TPIA was designed to do.

Finally, it is inconceivable that the Attorney General and TAMU are remaining silent instead of taking the affirmative position that information about foreign influence and funding of our State's institutions of higher education must be released.

PRAYER

For the reasons stated above, Zachor respectfully prays that the Court grant summary judgment to Zachor that the information must be released under section 552.324 (b) because TAMU did not file this lawsuit, or, in the alternative, dismiss the Qatar Foundation's claims in this lawsuit for lack of jurisdiction and grant to Zachor such other relief to which it shows itself to be entitled.

Respectfully submitted,

Jennifer S. Riggs
Jennifer S. Riggs
Texas Bar No. 16922300
RIGGS & RAY, P.C.
506 West 14th Street, Suite A
Austin, Texas 78701
(512) 457-9806
(512) 457-9066 facsimile
jriggs@r-alaw.com

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document has been forwarded by e-service on this 10th day of January, 2020, to:

D. Patrick Long
Texas Bar No. 12515500
pat.long@squirepb.com
Alexander J. Toney
Texas Bar No. 24088542
alex.toney@squirepb.com
SQUIRE PATTON BOGGS, LLP
2000 McKinney Ave., Suite 1700
Dallas, Texas 75201
(214) 758-1500
(214) 758-1550 (facsimile)

Kimberly Fuchs
Texas Bar No. 24044140
Assistant Attorney General
Kimberly.fuchs@oag.texas.gov
Open Records Litigation
P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548
(512) 475-4195
(512) 320-0167

Jennifer S. Riggs
Jennifer S. Riggs

TAB 2

JAN 21 2020

At 10:00 A.M.
Velva L. Price, District Clerk

CAUSE NO. D-1-GN-18-006240

QATAR FOUNDATION FOR
EDUCATION, SCIENCE AND
COMMUNITY DEVELOPMENT,
Plaintiff,

v.

KEN PAXTON, TEXAS
ATTORNEY GENERAL,
Defendant,

§
§
§
§
§
§
§
§

IN THE DISTRICT COURT
OF

200th JUDICIAL DISTRICT

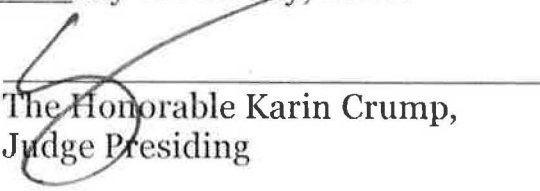
TRAVIS COUNTY, TEXAS

ORDER GRANTING PLEA TO THE JURISDICTION

On December 17, 2019, the Court heard Intervenor Zachor Legal Institute's Motion for Summary Judgment and alternative Plea to the Jurisdiction and the Plaintiff Qatar Foundation's Cross Motion for Summary Judgment in the above styled and numbered cause of action. The Court afforded the Plaintiff Qatar Foundation and the Defendant Attorney General the opportunity to submit responses to Zachor's Plea to the Jurisdiction after the hearing. After consideration of the pleadings, the cross motions for summary judgment, the competent summary judgment evidence, the plea to the jurisdiction, the arguments of all parties, and the applicable law, the Court has determined that it does not have jurisdiction over Plaintiff's claims.

IT IS, THEREFORE, ORDERED that Intervenor Zachor's Plea to the Jurisdiction shall be and is hereby GRANTED and that this case shall be and is hereby dismissed for lack of jurisdiction.

Signed this 17th day of January, 2020.


The Honorable Karin Crump,
Judge Presiding

APPROVED AS TO FORM AND SUBSTANCE:

Jennifer S. Riggs

Jennifer S. Riggs
Texas Bar No. 16922300
RIGGS & RAY, P.C.
506 West 14th Street, Suite A
Austin, Texas 78701
(512) 457-9806
(512) 457-9066 facsimile
jriggs@r-alaw.com

APPROVED AS TO FORM ONLY:

D. Patrick Long

Texas Bar No. 12515500
pat.long@squirepb.com
Alexander J. Toney
Texas Bar No. 24088542
alex.toney@squirepb.com
SQUIRE PATTON BOGGS, LLP
2000 McKinney Ave., Suite 1700
Dallas, Texas 75201
(214) 758-1500
(214) 758-1550 (facsimile)

Kimberly Fuchs

Texas Bar No. 24044140
Assistant Attorney General
Kimberly.fuchs@oag.texas.gov
Open Records Litigation
P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548
(512) 475-4195
(512) 320-0167

TAB 3

FEB 27 2020

At 3:44 P.M.
Velva L. Price, District Clerk

CAUSE NO. D-1-GN-18-006240

QATAR FOUNDATION FOR
EDUCATION, SCIENCE AND
COMMUNITY DEVELOPMENT,

Plaintiff,

v.

KEN PAXTON,
TEXAS ATTORNEY GENERAL

Defendant.

§
§
§
§
§
§
§
§
§
§
§

IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

200th JUDICIAL DISTRICT COURT

**ORDER DENYING MOTION TO SUSPEND ENFORCEMENT
OF ORDER OF DISMISSAL**

On this day, the Plaintiff's Motion to Suspend Enforcement of Judgment Pending Appeal and to Set Amount Required to Supersede Judgment came on for consideration, and the Court having considered the motion, the opposition, and the arguments of all parties, finds that the Motion should be DENIED because there is no "judgment" in this case that any party could enforce.

IT IS HEREBY ORDERED that the Qatar Foundation's Motion to Suspend Enforcement of Judgment Pending Appeal shall be and is hereby DENIED.

SIGNED on this 27th day of February, 2020.

JUDGE PRESIDING

KARIN CRUMP

TAB 4

Mandatory Source of Supply: Job Squad, Inc., Bridgeport, WV
Contracting Activity: VETERANS AFFAIRS, DEPARTMENT OF, NAC
Service Type: Janitorial/Custodial
Mandatory for: Minnesota Valley National Wildlife Refuge: Visitors Center, Bloomington, MN
Mandatory Source of Supply: AccessAbility, Inc., Minneapolis, MN
Contracting Activity: OFFICE OF POLICY, MANAGEMENT, AND BUDGET, NBC ACQUISITION SERVICES DIVISION

Patricia Briscoe,
Deputy Director, Business Operations (Pricing and Information Management).

[FR Doc. 2019-13819 Filed 6-27-19; 8:45 am]

BILLING CODE 6353-01-P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID USA-2019-HQ-0023]

Proposed Collection; Comment Request

AGENCY: Office of the Assistant Secretary of the Army for Civil Works (ASA(CW)), U.S. Army Corps of Engineers, DoD.

ACTION: Information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995*, the Office of the Secretary of the Army for Civil Works (ASA(CW)) announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by August 27, 2019.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

Mail: Department of Defense, Office of the Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive,

Mailbox #24, Suite 08D09, Alexandria, VA 22350-1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to U.S. Army Corps of Engineers, Directorate of Civil Works, Office of Planning and Policy, ATTN: Jeffrey Strahan, 441 G Street, Washington, DC 20314, or call (202) 761-8643. Another point of contact is the U.S. Army Corps of Engineers, Institute for Water Resources, ATTN: Kevin Knight, 7701 Telegraph Road, Alexandria, VA 22315, or call (703) 428-7250.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Corps of Engineers Navigation Surveys; OMB Control Number 0710-XXXX.

Needs and Uses: The data obtained from these surveys are used by the Army Corps of Engineers to estimate the shipper's response to changes in waterway attributes (such as congestion, reliability, rates and travel time). Hence, the overall objective of the proposed research is to develop shipper response function estimates for the Ohio River Waterway System.

Affected Public: Business or other For-Profit. All commercial commodity shippers, with a focus on grain as the primary commodity in the Ohio River Navigational system. For the purposes of this study, a shipper is defined as a company that sends or transports the good.

Annual Burden Hours: 293.5.

Number of Respondents: 1,174.

Responses per Respondent: 1.

Annual Responses: 1,174.

Average Burden per Response: 15 minutes.

Frequency: On occasion.

Dated: June 25, 2019.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense

[FR Doc. 2019-13819 Filed 6-27-19; 8:45 am]

BILLING CODE 5010-01-P

DEPARTMENT OF EDUCATION

Notice of Investigation and Record Requests

AGENCY: Office of the General Counsel, Department of Education.

ACTION: Notice.

SUMMARY: The Department publishes these letters, dated June 13, 2019, notifying Georgetown University and Texas A&M University of investigations related to the universities' reports of defined gifts and contracts, including restricted and conditional gifts or contracts, from or with a statutorily defined foreign source.

FOR FURTHER INFORMATION CONTACT: Patrick Shaheen, U.S. Department of Education, Office of the General Counsel, 400 Maryland Ave. SW, Room 6E300, Washington, DC 20202. Telephone: (202) 453-6339. Email: Patrick.Shaheen@ed.gov.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service, toll free, at 1-800-877-8339.

SUPPLEMENTARY INFORMATION: The Department publishes these letters, dated June 13, 2019, notifying Georgetown University and Texas A&M University of investigations related to the universities' reports of defined gifts and contracts, including restricted and conditional gifts or contracts, from or with a statutorily defined foreign source. The letter to Georgetown University is in Appendix A of this notice. The letter to Texas A&M University is in Appendix B of this notice.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotope, or compact disc) on request to the person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at: www.govinfo.gov. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at www.federalregister.gov. Specifically, through the advanced search feature at this site, you can limit



your search to documents published by the Department.

Program Authority: 20 U.S.C. 1011f.

Reed D. Rubinstein,
Acting General Counsel.

Appendix A—Letter to Georgetown University

John J. DeGioia, President
Georgetown University
37th and O Streets, N.W.
Washington, DC 20057

Re: Notice of 20 U.S.C. § 1011f
Investigation and Record Request/
Georgetown University

Dear President DeGioia:

Section 117 of the Higher Education Act of 1965, 20 U.S.C. § 1011f, requires certain institutions, including Georgetown University, to report statutorily defined gifts and contracts, including restricted and conditional gifts or contracts, from or with a statutorily defined foreign source, to the U.S. Department of Education. These reports may be found at <https://studentaid.ed.gov/sa/about/data-center/school/foreign-gifts>.

The Department believes Georgetown University's reporting may not fully capture all gifts, contracts, and/or restricted and conditional gifts or contracts from or with all foreign sources (e.g., Chinese nationals and agents who fund the Georgetown Initiative for U.S.-China Dialogue on Global Issues; the government of the People's Republic of China, its agencies, and agents, including but not limited to, the persons known as Huawei Technologies Co. Ltd., Huawei Technologies USA, Inc., and ZTE Corp, their employees, subsidiaries, agents, and affiliates; the government of Saudi Arabia, its agencies, and agents; the government of Qatar, its agencies, and agents, including but not limited to the Qatar Foundation for Education, Science and Community Development). For example, Georgetown University's Section 117 reporting should have included Georgetown University Qatar; all other Georgetown University locations, *see* <https://www.georgetown.edu/locations.html>; and all of Georgetown University's affiliated foundations and non-profit organizations, whether or not organized under the laws of the United States (e.g., the Prince Alwaleed bin Talal Center for Muslim-Christian Understanding), that receive gifts, enter into contracts, and/or receive or enter into restricted or conditional gifts or contracts from or with a foreign source and that operate substantially for the benefit or under the auspices of Georgetown University.

Section 117(f), 20 U.S.C. § 1011f(f), provides that whenever it appears an institution has failed to comply with the law, the Secretary of Education may request the Attorney General commence an enforcement action to compel compliance and to recover the full costs to the United States of obtaining compliance, including all associated costs of investigation and enforcement. To meet our statutory duty, the Department has opened an administrative investigation of your institution and requests production of these records within thirty days:

1. All records of (a) gifts from, (b) contracts with, and/or (c) restricted or conditional gifts from or contracts with, foreign sources. The time frame for this request is January 1, 2010, to the present.
2. All records of, regarding, or referencing (a) gifts from, (b) contracts with, and/or (c) restricted or conditional gifts from or contracts with (i) the government of the People's Republic of China, its agencies, and agents, including but not limited to, the persons known as Huawei Technologies Co. Ltd., Huawei Technologies USA, Inc., and ZTE Corp, their subsidiaries, agents, and affiliates; (ii) the government of Saudi Arabia, its agencies, and agents; (iii) the government of Qatar, its agencies, and agents, including but not limited to the Qatar Foundation for Education, Science and Community Development; and (iv) the government of Russia, its agencies, and agents, including but not limited to Kaspersky Lab and Kaspersky Lab US, its agents, employees, and affiliates. The time frame for this request is January 1, 2010, to the present.
3. All records of, regarding, or referencing foreign sources of gifts, contracts, and/or restricted and conditional gifts or contracts related to or for the benefit of Georgetown University Qatar. The time frame for this request is January 1, 2010, to the present.
4. All records of, regarding, or referencing activities taken by Georgetown University to comply with 20 U.S.C. §§ 1011f(a), (b), (c), and (e). The time frame for this request is January 1, 2014, to the present.
5. All records of, regarding, or referencing communications with foreign sources regarding the Georgetown Initiative for U.S.-China Dialogue on Global Issues and the Prince Alwaleed bin Talal

Center for Muslim-Christian Understanding. The time frame for this request is January 1, 2014, to the present.

6. All records of, regarding, or referencing communications between Prof. Theodore Moran and Huawei Technologies Co. Ltd., its agents, subsidiaries, and affiliates, including but not limited to Huawei Technologies USA, Inc. The time frame for this request is January 1, 2010, to the present.
7. All records of, regarding, or referencing "Hanban", the Office of Chinese Language Council International, or the Confucius Institute, their agents, employees, affiliates, or subsidiaries. The time frame for this request is January 1, 2015 to the present.
8. All records of, regarding, or referencing activities taken by or required of Georgetown University to confirm the foreign sources of gifts, contracts, and/or restricted or conditional gifts or contracts (e.g., the government of Qatar, its agencies, and agents; the Qatar Foundation for Education, Science and Community Development; and or persons funding or providing services to the Prince Alwaleed bin Talal Center for Muslim-Christian Understanding) (a) do not engage in, or provide material support to any person who engages in, activities prohibited by 18 U.S.C. §§ 2339, 2339A, 2339B, 2339C, and 2339D; and (b)(i) are not owned or controlled by, (ii) do not act for or on behalf of, assist, sponsor, or provide financial, material, or technological support or other services to, or in support of, and (iii) are not otherwise associated with, any person who is a "Specially Designated Global Terrorist" under Executive Order 13224. The time frame for this request is January 1, 2010, to the present.
9. All IRS Form 990s and schedules, including but not limited to Schedules F and R, for tax years 2014, 2015, 2016, 2017, and 2018, for Georgetown University and Georgetown University Qatar.

As used in this Notice of Investigation and Information Request:

"Contract" is defined at 20 U.S.C. § 1011f(h)(1).

"Foreign source" is defined at 20 U.S.C. § 1011f(h)(2).

"Gift" is defined at 20 U.S.C. § 1011f(h)(3).

"Institution" is at 20 U.S.C. § 1011f(h)(4) and includes all affiliated

foundations and non-profit organizations (e.g., the Prince Alwaleed bin Talal Center for Muslim-Christian Understanding), whether or not organized under the laws of the United States, that operate substantially for the benefit or under the auspices of Georgetown University.

"Restricted or conditional gift or contract" is defined by reference to 20 U.S.C. § 1011f(h)(5).

"Record" means all recorded information, regardless of form or characteristics, made or received by you, and including metadata, such as email and other electronic communication, word processing documents, PDF documents, animations (including PowerPoint™ and other similar programs) spreadsheets, databases, calendars, telephone logs, contact manager information, internet usage files, network access information, writings, drawings, graphs, charts, photographs, sound recordings, images, financial statements, checks, wire transfers, accounts, ledgers, facsimiles, texts, animations, voicemail files, data generated by calendaring, task management and personal information management (PIM) software (such as Microsoft Outlook), data created with the use of personal data assistants (PDAs), data created with the use of document management software, data created with the use of paper and electronic mail logging and routing software, and other data or data compilations, stored in any medium from which information can be obtained either directly or, if necessary, after translation by the responding party into a reasonably usable form. The term "recorded information" also includes all traditional forms of records, regardless of physical form or characteristics, including information created, manipulated, communicated, or stored in digital or electronic form.

Your record and data preservation obligations are outlined at Exhibit A. If you claim attorney-client or attorney-work product privilege for a given record, then you must prepare and submit a privilege log expressly identifying each such record and describing the nature of the emails, documents, communications, or tangible things not produced or disclosed in a manner that, without revealing information itself privileged, will enable the Department to assess the validity of your claim. Please note no other privileges apply to this records request.

This investigation will be directed by the Department's Office of General Counsel with support from Federal Student Aid. Your legal counsel should contact:

Reed D. Rubinstein,
Acting General Counsel
U.S. Department of Education
400 Maryland Ave., S.W.
Room 6E300
Washington, D.C. 20202
Reed.Rubinstein@ed.gov

Sincerely,
Mitchell M. Zais, Ph.D.

Appendix B—Letter to Texas A&M

Michael K. Young, President
Office of the President
1246 TAMU
Texas A&M University
College Station, TX 77843-1246

Re: Notice of 20 U.S.C. § 1011f
Investigation and Record Request/
Texas A&M University.

Dear President Young:

Section 117 of the Higher Education Act of 1965, 20 U.S.C. § 1011f, requires certain institutions, including Texas A&M University, to report statutorily defined gifts, contracts, and/or restricted or conditional gifts or contracts, from or with a statutorily defined foreign source, to the U.S. Department of Education. These reports may be found at <https://studentaid.ed.gov/sa/about/data-center/school/foreign-gifts>.

The Department believes that Texas A&M University's reporting may not fully capture all covered gifts, contracts, and/or restricted or conditional gifts or contracts, from or with all foreign sources (e.g., the government of Qatar, its agencies, and agents including but not limited to the Qatar Foundation for Education, Science and Community Development, its employees, subsidiaries, agents, and affiliates; the government of the People's Republic of China, its agencies, and agents, including but not limited to, the persons known as Huawei Technologies Co. Ltd., Huawei Technologies USA, Inc., and ZTE Corp, their employees, subsidiaries, agents, and affiliates). For example, Texas A&M University's Section 117 reporting should have included Texas A&M University at Qatar, see e.g., <https://www.qatar.tamu.edu/about/> ("As a branch campus, Texas A&M University at Qatar is included in the institution's accreditation") (last accessed May 28, 2019); all of Texas A&M University's other locations; and all of Texas A&M University's affiliated foundations and non-profit organizations (e.g. the Texas A&M Foundation), whether or not organized under the laws of the United

States, that (a) receive gifts, enter into contracts, and/or receive or enter into restricted or conditional gifts or contracts from or with a foreign source, and (b) operate substantially for the benefit or under the auspices of Texas A&M University.

Section 117(f), 20 U.S.C. § 1011f(f), provides that whenever it appears an institution has failed to comply with the law, the Secretary of Education may request the Attorney General commence an enforcement action to compel compliance and to recover the full costs to the United States of obtaining compliance, including all associated costs of investigation and enforcement. To meet our statutory duty, the Department has opened an administrative investigation of your institution and requests production of the following records within thirty (30) days:

1. All records of (a) gifts to, (b) contracts with, and (c) restricted or conditional gifts to or contracts with, foreign sources. The time frame for this request is January 1, 2014, to the present.
2. All records of, regarding, or referencing (a) gifts from, (b) contracts with, and (c) restricted or conditional gifts from or contracts with, (i) the government of Qatar, its agencies, and agents including but not limited to the Qatar Foundation for Education, Science and Community Development and (ii) the government of the People's Republic of China, its agencies, and agents, including but not limited to, the persons known as Huawei Technologies Co. Ltd., Huawei Technologies USA, Inc., and ZTE Corp, and their subsidiaries, agents, and affiliates. The time frame for this request is January 1, 2014, to the present.
3. All records of, regarding, or referencing the establishment and foreign sources of funding for Texas A&M University at Qatar. The time frame for this request is January 1, 2004, to the present.
4. All records of, regarding, or referencing activities taken by or required of Texas A&M University to comply with 20 U.S.C. §§ 1011f(a), (b), (c), and (e). The time frame for this request is January 1, 2014, to the present.
5. All records of, regarding, or referencing communications with the government of Qatar, its agencies, and its agents including but not limited to the Qatar Foundation for Education, Science and Community Development regarding the subject matter of an

action titled *Qatar Foundation for Education, Science and Community Development v. Ken Paxton, Texas Attorney General* (No. D-1-GN-18-006240).

6. All records of, regarding, or referencing a "Memorandum of Understanding" between Texas A&M University at Qatar and "Huawei" signed on or about May 31, 2015. See <https://www.gulf-times.com/story/441448/Huawei-supports-Tamuk-s-programme-for-students>. (last accessed June 12, 2019). The time frame for this request is January 1, 2013, to the present.
7. All records of, regarding, or referencing "Hanban", the Office of Chinese Language Council International, or the Confucius Institute, their agents, employees, affiliates, or subsidiaries. The time frame for this request is January 1, 2010 to the present.
8. All records of, regarding, or referencing activities taken by or required of your institution to confirm, foreign sources of gifts, contracts, and/or restricted or conditional gifts or contracts (e.g., the government of Qatar, its agencies, and agents; the Qatar Foundation for Education, Science and Community Development (a) do not engage in, or provide material support to any person who engages in, activities prohibited by 18 U.S.C. §§ 2339, 2339A, 2339B, 2339C, and 2339D; and (b)(i) are not owned or controlled by, (ii) do not act for or on behalf of, assist, sponsor, or provide financial, material, or technological support or other services to, or in support of, and (iii) are not otherwise associated with, any person who is a "Specially Designated Global Terrorist" under Executive Order 13224. The time frame for this request is January 1, 2009, to the present.
9. All IRS Form 990s and schedules, including but not limited to Schedules F and R, for tax years 2014, 2015, 2016, 2017, and 2018, for (a) Texas A&M University, (b) the Texas A&M Foundation, located at 401 George Bush Drive, College Station, TX 77840-2811, and (c) Texas A&M University at Qatar.

As used in this Notice of Investigation and Information Request:

"Contract" is defined at 20 U.S.C. § 1011f(h)(1).

"Foreign source" is defined at 20 U.S.C. § 1011f(h)(2).

"Gift" is defined at 20 U.S.C. § 1011f(h)(3).

"Institution" is defined at 20 U.S.C. § 1011f(h)(4) and includes all affiliated foundations and non-profit organizations (e.g., the Texas A&M Foundation), whether or not organized under the laws of the United States, that operate substantially for the benefit or under the auspices of Texas A&M University.

"Restricted or conditional gift or contract" is defined at 20 U.S.C. § 1011f(h)(5).

"Record" means all recorded information, regardless of form or characteristics, made or received by you, and including metadata, such as email and other electronic communication, word processing documents, PDF documents, animations (including PowerPoint™ and other similar programs) spreadsheets, databases, calendars, telephone logs, contact manager information, internet usage files, network access information, writings, drawings, graphs, charts, photographs, sound recordings, images, financial statements, checks, wire transfers, accounts, ledgers, facsimiles, texts, animations, voicemail files, data generated by calendaring, task management and personal information management (PIM) software (such as Microsoft Outlook), data created with the use of personal data assistants (PDAs), data created with the use of document management software, data created with the use of paper and electronic mail logging and routing software, and other data or data compilations, stored in any medium from which information can be obtained either directly or, if necessary, after translation by the responding party into a reasonably usable form. The term "recorded information" also includes all traditional forms of records, regardless of physical form or characteristics, including information created, manipulated, communicated, or stored in digital or electronic form.

Your record and data preservation obligations are outlined at Exhibit A.

If you claim attorney-client or attorney-work product privilege for a given record, then you must prepare and submit a privilege log expressly identifying each such record and describing the nature of the emails, documents, communications, or tangible things not produced or disclosed in a manner that, without revealing information itself privileged, will enable the Department to assess the validity of your claim. Please note no

other privileges apply to this information request.

This investigation will be directed by the Department's Office of General Counsel with support from Federal Student Aid. Your legal counsel should contact:

Reed D. Rubinstein,
Acting General Counsel
U.S. Department of Education
400 Maryland Ave., S.W.
Room 6E300
Washington, D.C. 20202
Reed.Rubinstein@ed.gov

Sincerely,
Mitchell M. Zais, Ph.D.

(FR Doc. 2019-13904 Filed 6-27-19; 8:45 am)

BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

National Nuclear Security Administration

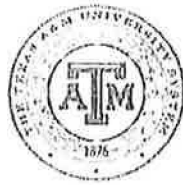
Notice of Availability of the Draft Supplement Analysis of the Complex Transformation Supplemental Programmatic Environmental Impact Statement

AGENCY: National Nuclear Security Administration, Department of Energy.
ACTION: Notice of availability.

SUMMARY: The National Nuclear Security Administration (NNSA), a semi-autonomous agency within the United States Department of Energy (DOE), announces the availability of the Draft Supplement Analysis (SA) of the Complex Transformation Supplemental Programmatic Environmental Impact Statement (SPEIS). NNSA is preparing the SA to determine whether, prior to proceeding with the action to produce plutonium pits at a rate of no fewer than 80 pits per year by 2030, the existing Complex Transformation SPEIS should be supplemented, a new environmental impact statement prepared, or no further National Environmental Policy Act (NEPA) analysis is required. The Draft SA preliminarily concludes that further NEPA documentation at a programmatic level is not required; however, NNSA will consider comments on the Draft SA and publish a Final SA with a final determination. The Draft SA is an important element of the overall NEPA strategy related to fulfilling national requirements for pit production. DOE announced this NEPA strategy on June 10, 2019 (84 FR 26849).

DATES: NNSA invites the public to review and submit comments on the Draft SA through August 12, 2019. Comments received after this date will be considered to the extent practicable.

TAB 5



Office of General Counsel
THE TEXAS A&M UNIVERSITY SYSTEM

November 8, 2018

Office of the Attorney General
Open Records Division
P.O. Box 12548
Austin, Texas 78711-2548

via UPS DELIVERY

Re: Request for a Decision regarding a Public Information Request from Marc Greendorfer to Texas A&M University (B002165-101618)

Dear Open Records Division:

On November 1, 2018, we requested a decision regarding an open records request Marc Greendorfer submitted to Texas A&M University on October 18, 2018.¹ The request, enclosed as Exhibit A, seeks certain correspondence.

We believe that the information responsive the request, which is enclosed as Exhibit B, may be excepted from disclosure under the Texas Public Information Act, chapter 552, Texas Government Code, (the "Act") as explained below. Therefore, we request a decision concerning this information.

Third-Party Proprietary Information. Section 552.104. Exception: Information Relating to Competition or Bidding; Section 552.110. Exception: Confidentiality of Trade Secrets; Confidentiality of Certain Commercial or Financial Information

The information enclosed as Exhibit B may include commercial or financial information excepted from disclosure as third-party proprietary information under sections 552.104 and/or 552.110 of the Act. Regarding the application of these provisions to the information at issue, we note that the Act provides:

- (a) In a case in which information is requested under this chapter and a person's privacy or property interests may be involved, including a case under section 552.101, 552.104, 552.110 or 552.114, a governmental body

¹ The request was originally received on October 16, 2018. The university requested clarification, and the requestor modified the request after the close of business hours on October 17, 2018. Therefore, the request is deemed received on October 18, 2018.



Open Records Division (B002165-101618)
November 8, 2018
Page 2 of 3

may decline to release the information for the purpose of requesting an attorney general decision.

- (b) a person whose interests may be involved under Subsection (a), or any other person, may submit in writing to the attorney general that person's reasons why the information should be withheld or released.
- (c) the governmental body may, but is not required to, submit its reasons why the information should be withheld or released.
- (d) If release of a person's proprietary information may be subject to exception under Section 552.101, 552.110, 552.113, or 552.131, the governmental body that requests an attorney general decision under Section 552.301 shall make a good faith attempt to notify that person of the request for the attorney general decision. Notice under this subsection must:
 - (1) be in writing and sent within a reasonable time not later than the 10th business day after the date the governmental body receives the request for the information; and
 - (2) include:
 - (A) a copy of the written request for the information, if any, received by the governmental body; and
 - (B) a statement, in the form prescribed by the attorney general, that the person is entitled to submit in writing to the attorney general within a reasonable time not later than the 10th business day after the date the person receives the notice:
 - (i) each reason the person has as to why the information should be withheld; and
 - (ii) a letter, memorandum, or brief in support of that reason.
- (e) A person who submits a letter, memorandum, or brief to the attorney general under Subsection (d) shall send a copy of that letter, memorandum, or brief to the person who requested the information from the governmental body. If the letter, memorandum, or brief submitted to the attorney general contains the substance of the information requested, the copy of the letter, memorandum, or brief may be a redacted copy.

TEX. GOV'T CODE ANN. § 552.305 (West 2012).

The university is declining to release the information to the requestor pending a decision from your office, and we are sending the letter prescribed by the attorney general to an entity as notice of its right to object to the release of materials containing proprietary information. A copy of this letter is enclosed as Exhibit C. The university also takes no position regarding the application of sections 552.104 or 552.110 to the information and declines to submit reasons why all or part of the marked information should or should not be considered proprietary to this entity.

Open Records Division (B002165-101618)
November 8, 2018
Page 3 of 3

Thank you for your consideration of this matter. If you have any questions, please feel free to contact me.

Sincerely,



R. Brooks Moore
Deputy General Counsel

Enclosures: Exhibits A, B, C

cc: Marc Greendorfer
info@zachorlegal.org

Michael A. Mitchell
General Counsel
Qatar Foundation for Education, Science and Community Development

TAMU Open Records